



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



November 22, 2002

Hong Don Lee
c/o 252 Harrison Avenue
Boston, MA 02111

**NOTICE OF DECISION
ADMINISTRATIVE FINE
No. AF 02-010
(WASTE MANAGEMENT)**

Dear Mr. Lee :

As you are aware, by Notice of Proposed Administrative Fine No. AF 02-010 issued March 21, 2002, the Waste Management Division sought administrative fines totaling \$6,100 against you for alleged violations of RSA 147-A, the state hazardous waste statute and RSA 149-M, the state solid waste management statute, arising from work on property located at 229 Mill Pond Road, Nottingham, NH ("the Site"). Pursuant to RSA 147-A:17-a and 149-M:16 and based on my review of the evidence presented at the hearing held on this matter on October 14, 2002, I have concluded that a fine of \$6,100 is appropriate as set forth below:

- ▶ A fine in the amount of \$300 is imposed against you. for failing to clearly label all containers of used oil destined for recycling.
- ▶ A fine in the amount of \$300 is imposed against you for failing to seal all containers of used oil destined for recycling.
- ▶ A fine in the amount of \$1,500 is imposed against you for failing to conduct a hazardous waste determination on containers and tanks with unknown contents as well as the stained soil on the Site.
- ▶ A fine in the amount of \$2,000 is imposed against you for failing to remediate a discharge of hazardous waste.
- ▶ A fine in the amount of \$2,000 is imposed against you for disposing of solid waste at an unpermitted solid waste facility.

The \$6,100 fine shall be paid within 30 days of the date of the decision, or at your election in four equal payments of \$1,525 in accordance with the following schedule:

First payment due: December 23, 2002 Second payment due: January 22, 2003

Third payment due: February 21, 2003 Fourth payment due: March 24, 2003

Fine payments shall be by check or money order payable to "Treasurer - State of NH" and

sent to the attention of the Legal Unit, DES/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

The proper management of hazardous waste and solid waste benefits the public health and environment of our state. RSA 147-A regulates the management and disposal of hazardous waste. The rules adopted pursuant to this statute implement the hazardous waste program. Under the rules, the used oil discovered on the Site is a hazardous waste and you are required to manage and dispose of the used oil accordingly. Thus, you were required to clearly label and seal all containers of used oil destined for recycling, conduct a hazardous waste determination on containers and tanks with unknown contents, including the stained soil, and remediate the hazardous waste discharge.

RSA 149-M regulates the management and disposal of solid waste. Specifically, RSA 149-M:9, II states that "[i]t shall be unlawful to transport solid waste to, or to dispose of solid waste at, any [solid waste] facility other than an approved [solid waste] facility." Under RSA 149-M:9, II, the Site is not a permitted solid waste facility. You violated the statute by disposing of solid wastes at an unpermitted solid waste facility.

This decision is based on the following findings and conclusions:

1. Hong Don Lee ("Mr. Lee") is the owner of property located at 229 Mill Pond Road, Nottingham, NH and more particularly described in the Rockingham County Registry of Deeds at Book 3440, Page 810, and identified on Nottingham Tax Map 0024, Lot 0139 ("the Site").
2. RSA 147-A:2, VI defines "[hazardous waste] generator" as "any person who owns or operates a facility where hazardous waste is generated."
3. RSA 147-A:2, IV defines "[hazardous waste] facility" as "a location at which hazardous waste is subjected to treatment, storage or disposal and may include a facility where hazardous waste is generated."
4. RSA 149-M:4, XXII defines "solid waste" in part, as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
5. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product... which is composed of wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."
6. RSA 149-M:9, II states that "[i]t shall be unlawful to transport solid waste to, or to dispose of solid waste at, any facility other than an approved facility."

7. On August 13, 2001, DES received a complaint from the Nottingham Fire Department about hazardous and solid wastes being stored at the Site. On August 20, 2001, DES received a similar complaint from an abutter to the Site.
8. On August 23, 2001, DES inspected the Site with the Nottingham Building Inspector and representatives from the Nottingham Fire and Police Departments. In a garage on the Site, DES observed automobile batteries, metal paint cans, unlabeled 20, 35, and 55 gallon plastic and metal containers and drums; containers containing material labeled "Gear Oil" "IH Gas Lubricant", "Muriatic Acid"; and unlabeled plastic and metal drums with unidentifiable contents. Some of the containers and drums were unsealed. DES also observed outside on the Site, several unlabeled 300 and 500 gallon fuel oil tanks, some with contents and one unsealed; several areas of stained soil; several unlabeled and unsealed containers of used oil; approximately 100 tires dumped over an embankment and into wetlands; and items scattered around the Site such as empty 55-gallon drums, restaurant equipment, a bicycle, windows, carpeting, clothing, empty propane cylinders, metal, and concrete blocks.
9. On August 28, 2001, DES met at the Site with David Lee and John Terninko. At the meeting, Mr. David Lee and Mr. Terninko told DES that they believed that most of the drums and containers held used oil and that Mr. Lee burned the oil in a stove in the garage. DES issued a Report of Initial Complaint Investigation ("RICI") to Mr. Lee which identified what actions needed to be taken to clean up the Site and gave it to Mr. Terninko, who signed it on behalf of Mr. Lee. DES provided Mr. Lee with copies of the hazardous waste and solid waste rules, and a list of firms that transport hazardous waste, remove tires, and remediate sites.
10. On October 3, 2001, DES inspected the Site and observed that one drum had been labeled and the car batteries had been removed; there were no other changes to the Site.
11. By letter dated November 19, 2001, DES informed Mr. Lee that the Site had to be cleaned up by December 7, 2001. Included with this letter was a copy of the RICI, copies of the hazardous waste and solid waste rules, and a list of firms that transport hazardous waste, remove tires, and remediate sites.
12. DES inspected the Site on November 28 and December 18, 2001 and observed little change.
13. By letter dated December 20, 2001, DES advised Mr. Lee that the Site was to be cleaned up by December 7th and informed him that DES would be inspecting the Site on December 27, 2001 to determine compliance with the hazardous waste and solid waste rules. Mr. Lee failed to contact DES.
14. On February 7, 2002, the Division issued Administrative Order No. WMD 02-005 ("the Order") to Mr. Lee. The Order required Mr. Lee to immediately cease bringing solid waste to the Site; within 60 days remove the solid waste from the Site to a permitted

facility; within 30 days, conduct a hazardous waste determination per Env-Wm 502.01; within 30 days of receiving the determination results, remove all hazardous waste to a permitted facility; immediately properly label and seal all used oil destined for recycling; within seven days forward copies of disposal receipts to DES for disposal of the solid waste, stained soil, and hazardous waste; and within 45 days, and again within 70 days, submit a status report on the clean up to DES. Mr. Lee failed to comply with the Order, appeal the Order, or contact DES.

15. On May 24, 2002, DES inspected the Site and observed that it had not been cleaned up and a Ford garbage truck with an expired registration was now parked on the Site.
16. On July 1, 2002, DES inspected the Site and observed additional solid waste that included a plastic drum and metal carts scattered about. Some of the drums were removed from the garage but DES did not know where they were taken.
17. On July 11, 2002, DES inspected the Site and observed that it had not been cleaned up.
18. Env-Wm 402.06(c) classifies used oil as a New Hampshire generic industrial process waste with the hazardous waste number of NH01.
19. The used oil observed at the Site is a hazardous waste under Env-Wm 402.06(c).
20. Mr. Lee is a hazardous waste generator as defined by RSA 147-A:2, VI.
21. The Site is a hazardous waste facility as defined by RSA 147-A:2, IV.
22. Env-Wm 502.01 requires a generator of waste to determine if that waste is a hazardous waste as set forth in Env-Wm 401.01.
23. Mr. Lee failed to determine if the unknown contents of containers observed on the Site are hazardous.
24. Env-Wm 513.02(a) requires a hazardous waste generator to be "responsible for the cleanup of any hazardous waste discharge or any discharge of a material which, when discharged, becomes a hazardous waste."
25. The stained soil observed at the Site is a discharge of hazardous waste.
26. Mr. Lee failed to cleanup the stained soil at the Site.
27. The tires, metal carts, windows, containers, carpeting, clothing, and other material scattered throughout the Site is solid waste as defined by RSA 149-M:4, XXII.
28. Mr. Lee violated Env-Wm 807.06(b)(4) by failing to clearly label all containers of used oil destined for recycling with the words "Used Oil for Recycle."


29. For a violation of Env-Wm 807.06(b)(4), Env-C 612.10(a)(1) specifies a fine of \$100 for each container that is 55-gallons or greater and not labeled. Env-C 612.10(a)(2) authorizes a fine of \$50 per container that is 55-gallons or less and not labeled. The total fine for this violation is \$300.
30. Mr. Lee violated Env-Wm 807.06(b)(5) by failing to seal all containers of used oil destined for recycling.
31. For a violation of Env-Wm 807.06(b)(5), Env-C 612.10(b)(1) specifies a fine of \$100 for each container that is 55-gallons or greater and not sealed. Env-Wm 612.10(b)(2) specifies a fine of \$50 per container that is 55-gallons or less and not sealed. The total fine for this violation is \$300.
32. Mr. Lee violated Env-Wm 502.01 by failing to conduct a hazardous waste determination on containers and tanks with unknown contents as well as the stained soil on the Site.
33. For a violation of 501.02, Env-C 612.05(a) specifies a fine of \$1,500 per determination not made. The total fine for this violation is \$1,500.
34. Mr. Lee violated Env-Wm 513.02(a) by failing to remediate a discharge of hazardous waste.
35. For a violation of 513.02(a), Env-C 612.09(d) specifies a fine of \$2,000 per calendar week or portion thereof the measures were not implemented. The total fine for this violation is \$2,000.
36. Mr. Lee violated RSA 149-M:9, II by disposing of solid waste at an unpermitted solid waste facility.
37. For a violation of RSA 149-M:9, II, Env-C 612.11(b) authorizes a fine of \$2,000 per 20 cubic yards of portion thereof disposed. The total fine for this violation is \$2,000.
38. Under Env-C 601.09(c), the imposed fine must be reduced by 10 percent if the Respondent proves certain mitigating factors by a preponderance of the evidence.
39. None of the factors identified in Env-C 601.06(c)(1) through (4) apply to reduce the amount of fine that can be imposed for the violations noted in # 28, 30, 32, 34, and 36 above, because the burden of proof for these factors is on Mr. Lee, and he did not attend or present evidence at the hearing.

You violated RSA 147-A by failing to properly manage and dispose of hazardous waste. You violated RSA 149-M by disposing of solid waste at an unpermitted solid waste facility. Thus, for the reasons discussed above, I have concluded that the \$6,100 fine imposed is appropriate.

As you know, the hearing on this matter was scheduled for October 14, 2002. The hearing was held as scheduled, however, you were not present, nor was anyone else present on your behalf. Moreover, because you did not inform the presiding officer of the absence prior to the hearing, the hearing was held pursuant to Env-C 204.09, subject to a motion to reconvene. Subsequently, you failed to file a motion to reconvene the hearing.

Even though you did not attend the hearing, I believe it is proper for this decision to issue. I want to remind you, however, that you and any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206 (copy enclosed).

Very truly yours,


COPY
George Dana Bisbee
Acting Commissioner

Enclosure

cc: Philip J. O'Brien, PhD, Director, Waste Management Division
Carl Woodbury, DES/WMD/SIS
Cheryl McGary, DES/WMD/SIS
Mark Harbaugh, DES Enforcement Attorney
Gretchen Rule, DES Legal Unit
Susan Weiss Alexant, DES Hearings and Rules Attorney